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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JUSTIN RAY EDWARDS,

Defendant and Appellant.

H042627

(Monterey County
Super. Ct. No. SS131351A)

Defendant Justin Ray Edwards appeals following the trial court's denial of his petition for recall of sentence and resentencing pursuant to Penal Code section 1170.18, subdivision (a). The Attorney General concedes that the trial court erred and requests that we remand the matter for consideration of the petition. We accept the Attorney General's concession.

STATEMENT OF THE CASE

In July 2013, defendant pleaded no contest to felony selling or transportation of heroin, and possession of a controlled substance and misdemeanor possession of paraphernalia. (Health & Saf. Code, §§ 11350 & 11352, subd. (a)). As a result of the plea, the court found defendant in violation of probation. The court suspended imposition of sentence and placed defendant on three years formal probation.

In March 2015, following the passage of Proposition 47, defendant petitioned to have his conviction reduced to a misdemeanor and to have his sentence recalled and be

resentenced pursuant to Penal Code section 1170.18, subdivision (a). The court denied the petition, finding that “someone on felony probation is not sentenced for the purpose of [Penal Code section] 1170.18.” Defendant filed a timely notice of appeal.

DISCUSSION

Defendant asserts that the court erred in denying his petition. He argues that his placement on felony probation for an eligible offense amounts to a felony sentence for the purpose of Proposition 47.

The Attorney General concedes, citing this court’s opinion in *People v. Garcia* (2016) 245 Cal.App.4th 555 (*Garcia*). Specifically, the Attorney General cites this court’s statement: “The parties agree that in passing Proposition 47 the voters intended to embrace probationers within the reach of the resentencing provision of [Penal Code] section 1170.18.” (*Id.* at p. 558.)

For the reasons set forth in *Garcia*, we accept the Attorney General’s concession and will remand the matter for reconsideration of the petition for recall and resentencing.

DISPOSITION

The matter is remanded for consideration of defendant’s petition for recall and resentencing.

RUSHING, P.J.

WE CONCUR:

MÁRQUEZ, J.

GROVER, J.

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